

ORDINANCE No. 118192

COUNCIL BILL No. 111303

INDEXED

Law Department

The City of Seattle--Legisla

REPORT OF COMMITTEE

Honorable President:

Your Committee on _____

to which was referred the within Council Bill No. _____
report that we have considered the same and respectfully recommend it

BECA Committee

Full Council vote 8

Committee Chair

COMPTROLLER FILE No. _____

Introduced: <i>JUN 17 1996</i>	By: <i>DRAGO</i>
Referred: <i>JUN 17 1996</i>	To: <i>Community Development Committee</i>
Referred:	To:
Referred:	To:
Reported: <i>JUN 24 1996</i>	Second Reading: <i>JUN 24 1996</i>
Third Reading: <i>JUN 24 1996</i>	Signed: <i>JUN 24 1996</i>
Presented to Mayor: <i>JUN 25 1996</i>	Approved: <i>JUN 20 1996</i>
Returned to City Clerk: <i>JUN 28 1996</i>	Published: <i>211e 4pp.</i>
Vetoed by Mayor:	Veto Published:
Passed over veto:	Veto Sustained:

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SMEAD 45 Y SP 17703

INDEXED

Law Department

The City of Seattle--Legislative Department

REPORT OF COMMITTEE

Date Reported
and Adopted

Honorable President:

Your Committee on _____

to which was referred the with Council Bill No. _____
report that we have considered the same and respectfully recommend that the same:

BECD Committee Report 4-0

Full Council vote 8-0

Committee Chair

ORDINANCE 118192

1 AN ORDINANCE relating to the Cor. Development Block Grant Float Loan
2 Program; authorizing a short-term loan of up to Eight Hundred Thousand Dollars
3 (\$ 800,000) in Block Grant funds to On The Boards, a Washington nonprofit
4 corporation, for an economic development project involving the purchase the Queen
5 Anne Hall; and authorizing an amendment to the City of Seattle's 1996 Consolidated
6 Plan.

7 WHEREAS, the City Council, by Ordinance 116402, adopted policies for short-term loans of
8 Community Development Block Grant ("CDBG") funds, known as "CD Float
9 Loans"; and

10 WHEREAS, the City's Director of the Office of Economic Development has identified an
11 economic development project in which the City would provide a short term loan to
12 On The Boards to assist On The Boards to purchase the Queen Anne Hall building
13 which it will use to create performance and retail space, thereby creating employment
14 within the City; which job creation will satisfy the CD Float Loan policies, and the
15 City's Loan Committee has approved the proposed loan in accordance with those
16 policies; and

17 WHEREAS, as part of this economic development project On The Boards will agree to direct
18 certain of its performance and/or instructional activities to benefit the Central and
19 Southeast areas of Seattle; and

20 WHEREAS, the City's Comprehensive Plan (G17) states that the City should preserve
21 developments of historic, architectural or social significance that contribute to the
22 identity of an area; and

23 WHEREAS, the preservation of the ACT Hall as a performance facility meets the intent of
24 the City's Comprehensive Plan; and

25 WHEREAS, the making of the proposed loan will not impair the implementation of other
26 projects or programs of the City using CDBG funds; and

27 WHEREAS, the expansion of the performance arts and its linkage to the Central and
28 Southeast areas of Seattle are important policies of the City;
NOW THEREFORE

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

29 Section 1. The Director of the Office of Economic Development ("OED
30 Director") is authorized, for and on behalf of The City, to lend up to EIGHT HUNDRED
31 THOUSAND DOLLARS (\$ 800,000) of CDBG funds, subject to receipt of such funds from
32 HUD, to On The Boards, a Washington nonprofit corporation, for financing the acquisition of
33 the Queen Anne Hall located at 100 West Roy Street, subject to the terms and conditions
34 stated in this Ordinance. The amount of up to EIGHT HUNDRED THOUSAND DOLLARS
35 (\$ 800,000) is hereby appropriated from the Housing and Community Development Revenue
36 Sharing Fund for such purpose.

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Section 2. The loan shall be payable upon the earlier of two years or demand by the City. The loan shall bear interest at an appropriate rate to be determined by the OED Director, not to exceed four percent (4%) per annum payable monthly. The OED Director may require a loan fee, payable to the City, not to exceed 1.0 % of the maximum loan amount. A portion of any fee may be paid to the National Development Council in compensation for consulting services, in accordance with an existing consultant contract. The amount of up to EIGHT THOUSAND DOLLARS (\$ 8,000) is hereby appropriated for such purpose from the Housing and Community Development Revenue Sharing Fund, subject to receipt of such funds in payment of such fee. The loan shall be secured by an irrevocable letter of credit that shall have an outstanding balance, at all times, at least equal to the outstanding loan amount, including accrued interest, plus all additional interest that will accrue for the next 30 days. The letter of credit shall be issued by a commercial bank satisfactory to the OED Director and shall be in form and content satisfactory to the OED Director.

Section 3. Disbursement of the loan shall be conditioned upon satisfactory environmental review in accordance with HUD requirements; execution and delivery by On The Boards of a job creation/retention agreement and upon other conditions required by law or deemed appropriate by the OED Director.

Section 4. The OED Director is hereby authorized to execute, deliver, accept, and enforce, as appropriate, for and on behalf of The City, a Loan Agreement and Promissory Note, evidencing the CD Float Loan authorized hereby, in form substantially as attached hereto as Exhibits A and B and incorporated herein by this reference.

Section 5. The OED Director is hereby authorized to take such other actions and execute and deliver such other documents as shall be reasonably necessary or appropriate to carry out the intent of this Ordinance.

Section 6. Payments of principal and interest on the loan shall be deposited in the Housing and Community Development Revenue Sharing Fund, and may be expended pursuant to any past or future appropriations of CDBG funds, whether in the annual budget or otherwise, unless such other appropriations are limited by their express terms to CDBG program income from other programs.

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1 Section 7. The Director of the Department of Housing and Human Services is
2 authorized to amend the City of Seattle's 1996 Consolidated Plan and to take such other
3 actions and provide necessary assurances to the U.S. Department of Housing and Urban
4 Development.

5 Section 8. Any act pursuant to the authority and prior to the effective date of this
6 ordinance is hereby ratified and confirmed.

7 Section 9. This ordinance shall take effect and be in force thirty (30) days from
8 and after its approval by the Mayor; but if not approved and returned by the Mayor within ten
9 (10) days after presentation, it shall take effect as provided by Municipal Code
10 Section 1.04.020.

11 Passed by the City Council the 24 day of June, 1996, and signed by me
12 in open session in authentication of its passage this 24 day of June, 1996.

13 *Jan DeLoach*
14 President of the City Council

15 Approved by me this 28 day of June, 1996.

16 *Norman B. Rice*
17 Norman B. Rice
18 Mayor

19 Filed by me this 28 day of June, 1996.

20 *Julia E. Papp*
21 City Clerk

22
23 (Seal)

24
25 Exhibits:
26 A. On The P Loan Agreement
27 B. On The B Promissory Note
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EXHIBIT A
On The Boards Loan Agreement

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EXHIBIT A

LOAN AGREEMENT

On the Boards -- Queen Anne Hall

THIS AGREEMENT dated _____, 1996, is entered into by On The Boards, a Washington nonprofit corporation ("OTB") and The City of Seattle, a Washington municipal corporation ("City").

RECITALS

This Agreement is entered into upon the basis of the following facts and circumstances:

A. The City of Seattle Office of Economic Development is responsible within the City for making, subject to City Council approval, short-term loans of Community Development Block Grant ("CDBG") funds made available to the City by the United States Department of Housing and Urban Development ("HUD"), pursuant to the Housing and Community Development Act of 1974, as amended, and the federal regulations promulgated thereunder (hereinafter collectively called the "Act").

B. OTB sponsors and provides performance space for contemporary dance and other performing arts. OTB wishes to purchase the Queen Anne Hall building located at 100 West Roy Street in Seattle, which it will operate as a performance hall and retail space.

C. OTB has requested a loan from the City in the principal amount of not to exceed Seven Hundred Sixty Thousand Dollars (\$760,000) (the "Loan"). OTB will use the loan as bridge financing to partially finance acquisition of Queen Anne Hall, a performance hall located at 100 West Roy Street in Seattle (the "Facility"). OTB's purchase of the Facility will allow OTB to relocate from its current rental theatre space to the Facility, which will give OTB its first permanent home and provide rehearsal, workshop, office and staging space. OTB will lease a portion of the Facility as commercial space, which will provide income for OTB and employment opportunities for City residents.

D. The Loan meets a national objective under the CDBG program by providing benefit to low and moderate income families through the creation of jobs at the Facility, as provided in 24 C.F.R. § 570.208 et seq. As a non-profit organization, OTB's acquisition of the Facility is an eligible project under the CDBG program as provided in 24 C.F.R. § 201(a) which authorizes the use of CDBG funds for "[a]cquisition . . . by a private nonprofit entity . . . for any public purpose."

E. The Loan shall be evidenced by this Agreement and by OTB's Promissory Note ("Note") in the form attached to this Agreement as Exhibit A and secured by an unconditional irrevocable letter of credit from a financial institution acceptable to City, payable upon demand ("Letter of Credit") in the form attached to this Agreement as Exhibit B. (The Note, this Agreement, and any other documents or instruments executed by OTB in favor of City pursuant

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to this Agreement or in connection with the Loan are collectively referred to as the "Loan Documents").

NOTICE: ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT, ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants, conditions, representations and warranties contained herein, the parties agree as follows:

ARTICLE I - THE LOAN

1.1 The Loan. In reliance upon OTB's representations and warranties, and subject to the terms and conditions of this Agreement and the other Loan Documents, the City agrees to loan OTB a sum of money not to exceed Seven Hundred Sixty Thousand Dollars (\$760,000) solely for the purposes set forth in this Agreement. Loan disbursements shall be made only to the extent of available funds received by City from HUD under the CDBG program, not yet required for any other CDBG-funded program or project of City, and the City shall have no obligation to make disbursements from any other source or to disburse any Loan proceeds if funds from the CDBG program are unavailable. OTB shall have the right to receive Loan funds from the City only pursuant to the terms and conditions of this Agreement and in accordance with the Act.

1.2 Interim Financing Only. The Loan is made solely to provide interim financing for a portion of OTB's cost to acquire Queen Anne Hall.

1.3 Loan Documentation, Interest and Security. The Loan shall be evidenced by this Agreement and by the Note. Payment of interest and principal shall be made in the amounts and at such times as is set forth in the Note. Any principal or interest outstanding after the date when payment is due shall bear interest at the default rate stated in the Note. The Loan at all times shall be secured by an irrevocable, unconditional letter of credit (the "Letter of Credit") from a bank acceptable to City in its sole discretion in form and content acceptable to City in its sole discretion, with an available balance at least equal to the sum of the full balance outstanding on the Loan (including principal and accrued interest) plus all interest that will accrue in the next 30 days, and with an expiration date at least 30 days after the maturity date of the Note. Unless otherwise requested by the City OTB shall make all Loan payments to the City, provided, that at any time and in its discretion the City shall have the right to draw on the Letter of Credit all or any portion of any amount due notwithstanding receipt of all or part of such amount from OTB, provided that City shall promptly thereafter return the payment made by OTB to the extent of any amount necessary to avoid duplication in payments of amounts due.

1.4 Loan Fee. OTB agrees to pay to City a loan fee of Ten Thousand Dollars (\$10,000), which shall be due on the date of disbursement of the Loan proceeds under this Agreement.

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ARTICLE II - REPRESENTATIONS AND WARRANTIES

In order to induce City to make the Loan, OTB represents and warrants as set forth below in this Article II. OTB's request for disbursement of the Loan proceeds shall constitute a representation and warranty that the facts set forth below are true and correct as of the execution hereof and as of the date of such request. These representations and warranties shall survive the execution, delivery and performance of the Loan Documents.

2.1 Authority. OTB has full power and authority to enter into this Agreement, to borrow money as contemplated herein and to execute and carry out the provisions of the Loan Documents, and no other action of OTB is required for the execution, delivery and performance of this Agreement or the Loan Documents. This Agreement and the Note constitute valid and binding obligations of OTB, each enforceable in accordance with their respective terms.

2.2 Nondiscrimination. During the performance of this Loan Agreement OTB shall not discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, sexual orientation, age or the presence of any sensory, mental or physical handicap in employment or application for employment or in the administration or delivery of services or any other benefits under this Loan Agreement. OTB shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations which prohibit such discrimination. These laws include, but are not limited to, Chapter 49.60 of the Revised Code of Washington, Titles VI and VII of the Civil Rights Act of 1964 and Chapter 14.04 of the Seattle Municipal Code.

2.3 No Litigation. There is no action, suit or proceeding pending, or to the knowledge of OTB threatened against or affecting OTB or relating to OTB's acquisition or use of the Facility in any court of law or in equity, or before or by any governmental or municipal authority contesting the legality of any of the terms and conditions of the Loan Documents or that might adversely affect the ability of OTB to perform its obligations hereunder or under any of the Loan Documents to which OTB is a party.

2.4 Covenants, Zoning and Codes. OTB has complied to date and will continue to comply with all applicable environmental statutes and regulations, if any, applicable to OTB's acquisition or intended use of the Facility. All permits, consents, approvals or authorizations by, or registrations, declarations, withholding of objections or filings with any governmental body necessary in connection with the valid execution, delivery and performance of this Agreement, or necessary for OTB to purchase the Facility, are valid, adequate and in full force and effect. OTB's operation of the Facility will in all respects conform to and comply with all covenants, conditions, restrictions and reservations affecting that building and the site on which it is located and with all applicable zoning, environmental protection, use and building codes, laws, regulations and ordinances.

2.5 Compliance With Documents. OTB is and will remain in full compliance with all of the terms and conditions of this Agreement, the Loan Documents, and any and all other agreements, instruments or other documents affecting OTB's acquisition and operation of the

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Facility and no event of default has or shall have occurred and be continuing, which, with the lapse of time or the giving of notice, or both, would constitute such an event of default under any of the foregoing.

ARTICLE III -- CONDITIONS PRECEDENT TO LOAN CLOSING

The City's obligation to perform its duties under this Agreement shall be subject to the full and complete satisfaction of the following conditions precedent:

3.1 Documents. The City shall have received fully executed originals of each of the following documents which shall have been duly authorized, executed and delivered by the parties thereto, and shall be in form and content satisfactory to City: this Agreement; the Promissory Note; the Letter of Credit; and any and all other documents as City may deem necessary or appropriate with respect to the Loan.

3.2 Insurance.

(a) OTB shall, at all times during the term of this Agreement, at its cost and expense, carry and maintain fire and extended coverage casualty insurance insuring the Facility for its replacement cost. OTB shall also carry and maintain general public liability insurance against claims for bodily injury, personal injury, death or property damage, with the City named as an additional insured. The limits of liability insurance, which may be increased from time to time as deemed necessary by City, with the approval of OTB which shall not be unreasonably withheld, shall not be less than One Million Dollars (\$1,000,000) combined single limit personal injury and property damage insurance. The insurance required above shall be issued by an insurance company or companies authorized to do business within the State of Washington and must be acceptable to City.

(b) Certificates or other evidence satisfactory to City evidencing the existence and terms and conditions of all insurance required above shall be delivered to City prior to the first disbursement of Loan proceeds. The policy or policies of insurance required to be maintained in accordance with this Agreement shall not be canceled or given notice of nonrenewal nor shall the terms or conditions thereof be altered or amended without thirty (30) days' written notice being given to City.

ARTICLE IV -- CONDITIONS PRECEDENT TO DISBURSEMENT OF LOAN PROCEEDS

4.1 City's obligation to disburse the Loan proceeds shall, in addition to compliance with the terms of Article III above, be subject to satisfaction of the following conditions:

(a) Receipt by City of any documents and assurances as it may reasonably request or which are required by HUD or any federal, state or county regulatory agency;

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(b) City shall have received and have in its possession sufficient Community Development Block Grant funds not otherwise required to meet commitments of City to fund the Loan;

(c) OTB shall be in full compliance and shall not be in default hereunder or under any of the Loan Documents, provided, however, that City may, in its discretion, elect to disburse the Loan proceeds notwithstanding the existence of a default, and the disbursement shall be deemed to have been made pursuant to this Agreement and shall be secured by the Letter of Credit.

(d) The Premises shall not have been materially damaged, destroyed, condemned or threatened with condemnation;

(e) No order or notice shall have been made by, or received from, any governmental agency having jurisdiction stating that OTB's acquisition or operation of the Facility is or will be in violation of any law, ordinance, code or regulation.

ARTICLE V -- LOAN COVENANTS

OTB covenants and agrees as follows:

5.1 General. From and after the date hereof and so long as any amount remains unpaid on the Promissory Note, or for so long as any commitment exists to extend credit under this Agreement, OTB covenants and agrees that it will:

(a) Promptly pay principal and interest pursuant to the Note as and when the same becomes due and payable;

(b) Obtain and maintain the insurance required herein.

5.2 Changes in Operation or Use. There shall be no material change to OTB's use of the Facility without the prior written approval of City, and, to the extent that such approvals may be required, the appropriate governmental authorities. City's approval under this Agreement shall not be unreasonably withheld provided that the change does not impair the CDBG national objective of providing area-wide benefit to low and moderate income families or other regulatory requirements. Any approval granted by the City for purposes of this Agreement shall not constitute, nor waive the requirement for, any other approval that may be required under any other agreement, law, ordinance, or regulation, nor may any such approval be relied upon by any person for any purpose other than compliance with this Section.

5.3 Call Provision. In addition to, and not in any way to be deemed any limitation upon, City's right to demand repayment of the Loan at any time, City may call the Loan

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immediately due and payable without notice and may draw on the Letter of Credit, at City's option, if at any time during the term of the Loan without City's prior written approval:

(a) OTB sells, transfers or assigns all or substantially all of OTB's interest in the Facility, whether voluntarily or involuntarily, or by the operation of law;

(b) there is not a Letter of Credit securing the Loan that complies strictly with all requirements of this Agreement; or

(c) there occurs any breach or default under the terms of the Promissory Note, this Loan Agreement or any of the Loan Documents which is not remedied in full within any applicable curative period.

Upon the occurrence of any of the foregoing, City may declare an Event of Default hereunder and exercise its rights and remedies under Article VI.

5.4 Inspections. The City and its representatives shall have the right at all reasonable times during regular business hours (and at any time in the event of an emergency) to enter upon and inspect the Facility to determine that the same is in conformity with this Agreement and all laws, ordinances, rules and regulations applicable to OTB's use of the Loan funds. City shall have the further right, from time to time, to inspect OTB's books and records relating to OTB's use of the Loan funds. Without limiting the foregoing, OTB shall permit City to examine and copy all books, records and other papers relating to OTB's use of the Loan funds to insure OTB's compliance with this Agreement, the Act and applicable provisions of federal, state, and local laws, ordinances, rules and regulations.

5.5 Notify City of Litigation or Complaints. OTB shall promptly notify City in writing of all litigation or possible litigation, and of all complaints or charges made by any governmental authority, that affect OTB or the Facility.

5.6 Indemnify City. OTB shall indemnify and hold City, its elected and appointed officials and any employees thereof, harmless from all liability for any actual or alleged damage or injury of whatsoever nature arising out of or in any way connected with the Loan or arising out of OTB's breach of the provisions of this Agreement, including the cost of defense thereof using counsel approved by City, provided, however, that OTB shall not be required to indemnify the City against liability for damages caused by or resulting from the sole negligence of the City, its officers, employees or agents. City may commence, appear in or defend any action or proceeding purporting to affect the rights, duties or liabilities of the parties hereto, or the Facility, and OTB shall pay all of the City's costs and expenses incurred thereby on demand. This section shall survive execution, delivery and performance of this Agreement, the Note and the Loan Documents.

5.7 Federal Regulations. OTB acknowledges that the Loan is to be made with federal funds received by City under the Community Development Block Grant ("CDBG") program

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under applicable regulations of the Department of Housing and Urban Development ("HUD"). Accordingly, OTB agrees, represents and warrants that during the performance of this Loan Agreement OTB will comply with all applicable requirements under HUD regulations for the CDBG program and under other laws and regulations applicable to loans of such federal funds, including without limitation, as applicable:

(a) Economic Opportunities for Low- and Very Low-Income Persons During the performance of this Loan Agreement. OTB shall comply, and cause all contractors and subcontractors to comply, with Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u, the purpose of which is to ensure that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very-low-income persons, particularly those who are recipients of government assistance for housing. During the performance of this Loan Agreement OTB shall comply and shall require all contractors and subcontractors to comply, with regulations issued pursuant thereto by the Secretary of HUD and set forth in 24 C.F.R. Part 135, and with all applicable rules and orders of HUD issued thereunder. Without limiting the foregoing, unless another method of demonstrating compliance has been approved in writing by the City or by HUD, OTB shall comply, and shall cause all contractors and subcontractors to comply, with the applicable numerical goals in 24 C.F.R. § 135.30. OTB certifies and agrees that OTB is under no contractual or other disability that would prevent OTB from complying with these requirements. During the performance of this Loan Agreement for all activities funded with the proceeds of this Loan, where required under applicable federal regulations OTB shall cause the "Section 3 clause" set forth in 24 C.F.R. § 135.38 to be included in all contracts and subcontracts; shall, at the direction of the City, take appropriate action pursuant to any such contract upon finding that the contractor is in violation of regulations issued by the Secretary of HUD in 24 C.F.R. Part 135; and OTB shall not let any contract unless the contractor has first provided OTB with a preliminary statement of ability to comply with the requirements of these regulations.

(b) Equal Opportunity. OTB shall ensure compliance with Executive Order 11246, entitled "Equal Opportunity", as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, 41 C.F.R. Part 60, which provide that no person shall be discriminated against because of race, color, religion, sex or national origin in all phases of employment during the performance of federal contracts and subcontracts, and OTB shall take affirmative action to ensure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training or apprenticeship. The "equal opportunity clause" set forth in 41 C.F.R. § 60-1.4(a) is hereby incorporated by reference as though fully set forth, with OTB as "Contractor" thereunder, and such clause shall be set forth or incorporated by reference in each contract and subcontract funded wholly or in part with CDBG funds.

(c) Nondiscrimination. No person shall on the grounds of race, color, national origin, religion or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with CDBG funds.

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OTB shall comply fully with all requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., which provides that no person in the United States shall on the ground of race, color or national origin, be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance; and with Department of Housing and Urban Development ("HUD") regulations implementing such requirements, 24 C.F.R. Part 1.

OTB shall comply with all of the requirements and prohibitions of 24 C.F.R. Section 570.602, implementing the nondiscrimination requirements of Section 109 of the Housing and Community Development Act of 1974, as amended; those of HUD regulations under the Rehabilitation Act of 1973, as amended, 24 C.F.R. Part 8; those of HUD Regulations under the Americans with Disabilities Act; and those of HUD regulations under the Age Discrimination Act of 1975, 42 U.S.C. Section 6101 et seq., at 24 C.F.R. Part 146.

No otherwise qualified handicapped individual in the United States shall, solely by reason of handicap, be excluded from the participation in, be denied the benefits, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

When procuring property or services wholly or in part with Loan funds, OTB shall take affirmative steps to comply with Executive Orders 11625, 12432 and 12138, and with 24 C.F.R. § 85.36(e), regarding contracting with small and minority firms, women's business enterprises and labor surplus area firms.

(d) Benefit to Low and Moderate Income People. OTB's acquisition of the Facility shall benefit low- and moderate-income persons (as defined by HUD) to the maximum extent feasible. OTB has entered into an Employment Agreement with the City and certain agencies regarding the manner in which job opportunities will be made available to low- and moderate-income persons. While such Employment Agreement is not a condition for eligibility for CDBG funds, OTB's compliance with its obligations under that agreement shall be a material condition of this Loan, and the City shall have the right to treat any material failure by OTB to comply with its obligations under such Agreement as a material default by OTB under this Loan Agreement.

(e) Cost Accounting. OTB shall comply with those provisions of the following OMB Circulars and Attachments thereto that are applicable pursuant to 24 C.F.R. § 570.502:

- A-87 - Cost Principles applicable to Federal Grants and Contracts
- A-128 - Audits of State and Local Governments

and with applicable provisions of 24 C.F.R. Part 85 (HUD's adoption of the "common rule").

(f) Conflict of Interest. No officer, agent, employee or consultant of The City of Seattle, member of the Seattle City Council, or other public official of the City, who exercises any

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function or responsibilities with respect to the Loan or the Facility shall have any financial interest, direct or indirect, for himself or herself or those with whom he or she has family or business ties, in any contract or subcontract or agreement with respect thereto or the proceeds thereof; nor shall (s)he for one year after completion of his or her tenure with the City have any financial interest in OTB.

(g) Eligibility Restrictions for Certain Resident Aliens. No CDBG funds shall be used to provide benefits to newly legalized resident aliens in violation of 24 C.F.R. § 570.613 and Part 49. OTB shall obtain and preserve certifications as provided in 24 C.F.R. § 49.20 to demonstrate compliance with this Section.

(h) Debarred Contractors. No portion of the Loan shall be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund, any contractor or subrecipient during any period of debarment, suspension, proposal for debarment or placement in ineligibility status of such contractor or subrecipient under the provisions of 24 C.F.R. Part 24. OTB represents and warrants that neither OTB nor its principals is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in federal assistance programs under such regulations or Executive Order 12549, "Debarment and Suspension."

(i) Relocation. OTB agrees, represents and warrants that no person or business has been rendered a "displaced person" within the meaning of the federal Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, or regulations thereunder (collectively the "URA") and no person or business shall be rendered a "displaced person" under the URA, in connection with the this Agreement.

(j) Lead-Based Paint. OTB shall comply with all applicable requirements of 24 CFR Part 35, with regard to lead-based paint.

(k) Lobbying. OTB hereby certifies and agrees as follows, in accordance with 31 U.S.C. § 1352, to the best of its knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of OTB, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to

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influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

3. It will require that the language of this Section be included in the award documents for subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction by section 1352, title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(l) Records. OTB shall maintain and make available to the City and HUD all records reasonably required to demonstrate compliance with all of the requirements of this Section, for at least three years after full repayment of the Loan.

(m) Indemnity. OTB shall hold City harmless from any loss, damage, expense, claim or demand resulting from OTB's failure to comply with any federal requirement or failure to maintain adequate records to demonstrate such compliance. This provision shall survive expiration of this Agreement.

5.8 Certain City Requirements: Non-discrimination; Fair Employment; Affirmative Hiring; Compliance

(a) Discrimination Prohibited

During the performance of this Loan Agreement OTB shall comply with Seattle Municipal Code Chapter 20.44, as now or hereafter amended, and OTB agrees as follows:

(1) OTB will not discriminate against any employee or applicant for employment because of race, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap unless based upon a bona fide occupational qualification. OTB will take affirmative action to ensure that applicants are employed, and

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that employees are treated during employment, without regard to their creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap unless based on a bona fide occupational qualification. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. OTB agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

(2) OTB shall, prior to commencement and during the term of this Loan Agreement, furnish to the City of Seattle's Director of Administrative Services or his designee, upon his request and on such form as may be provided by the Director of Administrative Services, a report of the affirmative action taken by OTB in implementing the terms of this provision, and will permit access to his records of employment, employment advertisements, application forms, other pertinent data and records by the Director or his designee to determine compliance with this provision.

(3) If upon investigation the Director of Administrative Services finds probable cause to believe that OTB has failed to comply with any of the terms of this Section, the Director and DHHS shall give OTB an opportunity to be heard after ten (10) days notice. If DHHS concurs in the findings of the Director, it may suspend its performance under this Loan Agreement and/or withhold any funds due or to become due to OTB, pending compliance by OTB with the terms of this Section.

(4) Failure to comply with any of the terms of this Section shall be a material breach of this Loan Agreement.

(5) This Subsection A. shall be included in all contracts and subcontracts for the Project.

(b) Fair Employment Practices

OTB acknowledges notice of the following excerpted from Seattle Municipal Code Chapter 14.04.020, as amended:

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It is declared to be the policy of the City, in the exercise of its police powers for the protection of the public health, safety, and general welfare, and for the maintenance of peace and good government, to assure equal opportunity to all persons, free from restrictions because of race, color, sex, marital status, sexual orientation, political ideology, age, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap.

(c) Compliance OTB shall require compliance with this Section "Certain City Requirements" and will take appropriate action upon a finding that any contractor is in violation of the requirements of this Section, and will not let any contract unless the contractor has first provided OTB with a preliminary statement of ability to comply with the requirements of these regulations.

(d) Political Activity. No portion of the Loan shall be used for any partisan political activity or to further the election or defeat of any candidate for public office or to influence the approval or defeat of any ballot issue or legislation.

(e) Further Actions. OTB will at any time and from time to time upon request of City take or cause to be taken any action, execute, acknowledge, deliver or record any further documents, opinions, or other instruments or obtain such additional insurance as City is required to do or obtain by HUD or other federal, state or county regulatory agency.

ARTICLE VI -- DEFAULT AND REMEDIES

6.1 Event of Default. Occurrence of any of the following events shall constitute an Event of Default hereunder:

(a) Any failure by OTB to pay when due any principal, interest or other amounts owing to City hereunder.

(b) If at any time the balance outstanding hereunder is not fully secured by a Letter of Credit strictly satisfying all of the requirements of this Agreement.

(c) Any breach by OTB of any of the other non-monetary covenants and conditions of this Agreement which breach is not cured to City's satisfaction within ten (10) working days from the occurrence thereof, provided, that in the event of a nonmonetary breach or default by OTB which is outside of the control of OTB and which cannot be cured within said ten (10) working days, OTB shall have commenced to cure its breach or default within said ten (10) working days and thereafter diligently proceeds to cure its breach or default.

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(d) Any representation, warranty or disclosure made to City by OTB proves to be materially false or misleading as of the date when made, whether or not such representation or disclosure appears in this Agreement.

(e) A petition in bankruptcy or for reorganization or for an arrangement under any bankruptcy or insolvency law or for a receiver or trustee for any of OTB's property is filed by OTB, or is filed against OTB and is not dismissed within forty-five (45) days, or if OTB makes an assignment for the benefit of creditors or becomes insolvent or unable to pay its debts as they mature or any attachment or execution is levied against a substantial portion of the property of OTB and is not discharged within forty-five (45) days.

(f) There occurs any event which in City's reasonable judgment adversely affects (i) the ability of OTB to perform any of its obligations hereunder or under any of the Loan Documents (ii) the business or financial condition of OTB; or (iii) compliance with the Act.

6.2 Remedies.

(a) Upon the occurrence of an Event of Default, City may, in addition to any other remedies which City may have hereunder or under the Loan Documents or by law, at its option and without prior demand or notice take any or all of the following actions:

(1) Immediately terminate any further advance of Loan funds hereunder.

(2) Declare the Note immediately due and payable and immediately draw against the Letter of Credit in the full amount owing.

(b) Regardless of whether an Event of Default shall have occurred, if any amounts owing hereunder are paid other than through draws on the Letter of Credit after the 150th day before the expiration date of the Letter of Credit, City shall have the absolute right, without notice or demand, at any time beginning 30 days in advance of the expiration date of the Letter of Credit, to draw on the Letter of Credit in an amount up to the maximum amount that was owing on the Loan at any time on or after the 150th day prior to such expiration date, provided that City shall then promptly return to OTB the full amount of all payments made by OTB on the Loan that were credited after the date as of which such maximum balance was computed, but net of any further advances made on the Loan after such date. City, in order to protect its security in the event of a possible petition in bankruptcy or receivership filed within any applicable "preference" period after any such payment, and of which OTB might not receive notice prior to the expiration of the Letter of Credit, may exercise its rights under the foregoing sentence even if the full amount owing under the Loan is paid on or before the due date thereof. The period of 150 days stated in this paragraph (b) shall be increased automatically to the extent necessary so that it remains at least 25 days more than any preference period applicable to creditors other than "insiders" under any provision of federal or state law, including without limitation 11 U.S.C. Section 547(b)(4)(A) or successor provision.

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(c) All remedies of City provided for herein and in any other Loan Documents are cumulative and shall be in addition to all other rights and remedies provided by law. The exercise of any right or remedy by City hereunder shall not in any way constitute a cure or waiver of default hereunder or under any other Loan Document or invalidate any act done pursuant to any notice of default, or prejudice City in the exercise of any of its rights hereunder or under any other Loan Documents unless, in the exercise of said rights, City realizes all amounts owed to it under such Loan Documents.

ARTICLE VII -- MISCELLANEOUS

7.1 No Waiver. No waiver of any default or breach by OTB hereunder shall be implied from any failure by City to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver and shall be operative only for the time and to the extent therein stated. Waivers of any covenants, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by City to, or of, any act by OTB requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to, or of, any subsequent similar act.

7.2 Successors and Assigns. This Agreement is made and entered into for the sole protection and benefit of the City and OTB, their successors and assigns, and no other person or persons shall have any right of action hereunder. The terms hereof shall inure to the benefit of the successors and assigns of the parties hereto; provided, however, that the OTB's interest hereunder cannot be assigned or otherwise transferred without the prior consent of City.

7.3 Notices. Any notice, demand or request required hereunder shall be given in writing at the addresses set forth below by personal service or first class mail. The addresses may be changed by notice to the other party given in the same manner as provided above. If notice is given by mail, it shall be deemed received on the earlier of: (i) if by certified mail, the date of receipt as shown on the return receipt, or (ii) three (3) days after its deposit in the U.S. mail.

If to OTB:

On the Boards

If to City:

Office of Economic Development
City of Seattle
3rd Floor, 600 Fourth Avenue

Seattle, Washington 98104
Attn: Director

7.4 Time. Time is of the essence of all provisions of the Loan Documents.

7.5 Amendments. No amendment, modification, or termination of any provisions of this Agreement or of any of the Loan Documents shall in any event be effective unless the same shall be in writing and signed by the City and OTB.

7.6 Headings. The article and section headings in no way define, limit, extend or interpret the scope of this Agreement or of any particular article or section.

7.7 Number and Gender. When the context in which the words are used in this Agreement indicate that such is the intent, words in the singular number shall include the plural and vice-versa. References to any gender shall also include the other gender or neutral gender, as appropriate.

7.8 Validity. In the event that any provision of this Agreement shall be held to be invalid, the same shall not affect the validity of the remainder of this Agreement.

7.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, and the City of Seattle, except to the extent federal law applies.

7.10 Survival. All agreements, representations and warranties made herein and in the Note shall survive the execution and delivery of this Agreement and of the Loan Documents and the making of the Loan hereunder and continue in full force and effect until the obligations of OTB hereunder and the indebtedness evidenced by the Promissory Note have been fully paid and satisfied, and thereafter to the extent provided in the Loan Documents, regardless of whether the Note is surrendered or marked as canceled or paid in full.

7.11 Venue and Forum. In the event that any legal action should be filed by either party against the other, the venue and forum for such action shall be the Superior Court of the State of Washington for the County of King.

7.12 Attorney's Fees. In the event either party shall bring an action to enforce the terms and conditions of this Agreement, the prevailing party shall be entitled to recover all of its costs and expenses, including, but not limited to, reasonable attorney's fees as determined by the court.

7.13 Duplicate Originals. This Agreement shall be executed in duplicate and each of the parties hereto shall receive an original, provided that each original shall constitute one and the same agreement.

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IN WITNESS WHEREOF, the City and On The Boards have executed this Agreement as of the date first written above by and through their duly authorized representatives.

CITY
THE CITY OF SEATTLE, a
Washington municipal corporation

ON THE BOARDS, a Washington non-profit
corporation,

By: _____
Mary Jean Ryan
Director of Economic Development

By: _____
Print name: _____
Its: _____

LIST OF EXHIBITS

- A. Form of Promissory Note
- B. Form of Letter of Credit

otbflotl.lag - krh - 6/10/96

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[EXHIBIT A to Loan Agreement]

PROMISSORY NOTE

\$760,000.00

_____, 1996
Seattle, Washington

FOR VALUE RECEIVED, the undersigned, On The Boards, a Washington non-profit corporation ("Borrower"), promises to pay to the order of The City of Seattle, a Washington municipal corporation ("City"), at its Office of Economic Development, 600 Fourth Avenue, Seattle, Washington 98104, or such other place as the holder of this Note may from time to time designate, the principal sum of Seven Hundred Sixty Thousand Dollars (\$760,000.00) or so much thereof as may be advanced hereunder (the "Loan"). This note is made pursuant to the terms of the Loan Agreement between the Borrower and the Lender dated _____, 1996 (hereafter the "Loan Agreement"). In the event of any conflict between the terms hereof and the terms of the Loan Agreement, the terms of the Loan Agreement shall control. Capitalized terms not defined herein shall have the meanings set forth in the Loan Agreement unless the context otherwise clearly requires. Disbursement of the funds evidenced by this Note is to be made subject to the terms and conditions of the Loan Agreement.

Simple interest will accrue from the date of this Note at a rate of two percent (2%) per annum and will be computed on the outstanding principal balance as it exists from time to time. Interest shall accrue from the date of disbursement of Loan proceeds. Borrower shall pay accrued interest monthly, on the seventh day of each month, commencing the first month after the month in which Loan proceeds are disbursed to Borrower.

The principal balance outstanding hereon, together with all accrued and unpaid interest and any other sums due hereunder, shall be due and payable in full on the earlier of (i) demand by the holder hereof (said demand to be made as set forth below), or (ii) two years after the date of the first disbursement of funds hereunder. The holder of this Note shall have the absolute right to demand partial or full repayments of the outstanding principal balance of, and interest accrued on, this Note at any time. Borrower acknowledges that demands for payment may be made by the holder of this Note at any time for any reason regardless of Borrower's full compliance with all terms of the Loan Documents. At the earlier of the expiration of the Loan, demand for full repayment, or acceleration of the Loan, Borrower shall pay, in a single payment, all of the remaining unpaid principal and interest of the Loan, together with any other amounts due under this Note or the Loan Agreement. Payments under this Note shall be applied first any costs or fees owing hereunder or under the Loan Agreement, next to accrued interest, and finally to the reduction of the principal of this Note.

Provided that the undersigned shall first give the holder of this Note ninety (90) calendar days' prior notice, the indebtedness evidenced hereby may be prepaid in whole or in part from

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time to time without premium or penalty. Any such prepayment shall be made by draw against the Letter of Credit referenced below if so elected by the holder of this Note within such 90 day period.

Should default be made in any payment when due or in the performance or observance of any of the covenants and agreements of this Note, the whole sum of principal and interest shall become immediately due and payable at the option of the holder. Failure to exercise such option shall not constitute a waiver of the right to exercise it in the event of a continuing or subsequent default. Whether or not the entire balance is accelerated, all amounts of principal and interest past due shall bear interest at the rate of twelve percent (12%) per annum from and after the due date.

An Event of Default under the Loan Agreement shall be a default hereunder, whereupon the holder may at its option declare all sums as are then outstanding hereunder immediately due and payable. This Note shall be secured by an unconditional, irrevocable letter of credit (the "Letter of Credit"), payable upon demand, issued by a banking institution mutually agreeable to the undersigned and the holder of this Note, all as more fully set forth in the Loan Agreement.

Upon the sale, transfer or assignment, whether voluntary, involuntary or by operation of law, of all or substantially all of Borrower's interest in the Facility (as such term is defined in the Loan Agreement), then at its sole option the holder hereof may, by written notice to the undersigned, declare all sums as are then outstanding hereunder to be immediately due and payable.

The holder of this Note may make demand for partial repayments of principal, or payments of interest, or both, and shall make demand for full repayment, upon the undersigned, in writing, by delivering or mailing said demand to the undersigned in the manner and at the address set forth in the Loan Agreement. Payments shall be due and payable on or before ten (10) days, excluding Saturdays, Sundays and legal holidays, from the date the undersigned receives or is deemed to have received the demand. Unless otherwise specified in the demand, payment shall be made by a draw against the Letter of Credit.

The obligations of the Borrower under this Note are absolute, unconditional and irrevocable. All payments required hereunder shall be made without any setoff, counterclaim, deduction or withholding whatsoever.

Except for the demands described above, the undersigned hereby waives diligence, demand, presentment for payment, and notice of whatever kind or nature. Without discharging or in any way affecting the liability of the undersigned, the undersigned hereby consents to any and all extensions of this Note as the holder hereof may in its sole discretion grant from time to time, to the release of all or any part of the security for the payment hereof and to the release of any party liable for repayment of the obligations hereunder.

All payments due on this Note shall be payable in lawful money of the United States of America at the time of payment. Unless otherwise specified in writing by the holders of this Note, all payments shall be made by draws against the Letter of Credit. If the issuer of the Letter of

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Credit fails to honor any draw by the holder of this Note in full or in part, or if the amount remaining on the Letter of Credit is insufficient to pay the amount due on the Note, or in the event that the holder of this Note is required by any law or court order to refund or otherwise relinquish any portion of any amount received from any draw on the Letter of Credit, then Borrower shall pay the full balance due immediately on demand. Any such payment shall be in immediately available funds, and shall be made to the holder at the address first hereinabove indicated, or such other address as the holder may hereafter designate.

This Note shall be governed by the laws of the State of Washington, except to the extent that Federal laws or regulations may preempt the laws of the State of Washington.

In the event that this Note is placed in the hands of an attorney at law for collection after maturity or upon default or in the event that proceedings at law or in equity are instituted in connection herewith, or in the event that this Note is placed in the hands of an attorney at law to enforce any of the rights or the Agreements contained herein or in the Loan Agreement, the undersigned shall pay all costs of collecting or attempting to collect this Note or protecting or enforcing such rights including, without limitation, reasonable attorney's fees (including fees incurred in any bankruptcy, appellate, or arbitration proceeding); and all such amounts shall be deemed to be secured by the letter of credit.

This Note and the Loan Agreement are subject to the limitation that in no event shall interest or any other amount paid or agreed to be paid for the use, forbearance or detention of money to be advanced hereunder or pursuant to the Loan Agreement exceed the highest lawful rate permissible under applicable usury laws, if any. If fulfillment of any provision hereof or of the Loan Agreement shall be deemed by a court of competent and final jurisdiction to violate any applicable usury restrictions, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and any amount received in excess of such limit shall be applied to reduce the unpaid principal balance hereof and not to the payment of interest.

Time is of the essence of this Note and of each and every provision hereof.

Borrower represents and warrants that this Note is made, and the proceeds hereof are to be used, solely for business and commercial purposes and not for personal, consumer, household or family purposes.

No amendment, modification, or termination of any provision of this Note or of any of the Loan Documents shall in any event be effective unless the same shall be in writing and signed by Lender and Borrower.

NOTICE: ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT, ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, the undersigned has executed this Promissory Note as of the date first above written.

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ON THE BOARDS

By: _____
Print name: _____
Its: _____

krh - otbflot.not - 6.4.96

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EXHIBIT B
On The Boards Promissory Note

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EXHIBIT B

[EXHIBIT A to Loan Agreement]

PROMISSORY NOTE

\$760,000.00

_____, 1996
Seattle, Washington

FOR VALUE RECEIVED, the undersigned, On The Boards, a Washington non-profit corporation ("Borrower"), promises to pay to the order of The City of Seattle, a Washington municipal corporation ("City"), at its Office of Economic Development, 600 Fourth Avenue, Seattle, Washington 98104, or such other place as the holder of this Note may from time to time designate, the principal sum of Seven Hundred Sixty Thousand Dollars (\$760,000.00) or so much thereof as may be advanced hereunder (the "Loan"). This note is made pursuant to the terms of the Loan Agreement between the Borrower and the Lender dated _____, 1996 (hereafter the "Loan Agreement"). In the event of any conflict between the terms hereof and the terms of the Loan Agreement, the terms of the Loan Agreement shall control. Capitalized terms not defined herein shall have the meanings set forth in the Loan Agreement unless the context otherwise clearly requires. Disbursement of the funds evidenced by this Note is to be made subject to the terms and conditions of the Loan Agreement.

Simple interest will accrue from the date of this Note at a rate of two percent (2%) per annum and will be computed on the outstanding principal balance as it exists from time to time. Interest shall accrue from the date of disbursement of Loan proceeds. Borrower shall pay accrued interest monthly, on the seventh day of each month, commencing the first month after the month in which Loan proceeds are disbursed to Borrower.

The principal balance outstanding hereon, together with all accrued and unpaid interest and any other sums due hereunder, shall be due and payable in full on the earlier of (i) demand by the holder hereof (said demand to be made as set forth below), or (ii) two years after the date of the first disbursement of funds hereunder. The holder of this Note shall have the absolute right to demand partial or full repayments of the outstanding principal balance of, and interest accrued on, this Note at any time. Borrower acknowledges that demands for payment may be made by the holder of this Note at any time for any reason regardless of Borrower's full compliance with all terms of the Loan Documents. At the earlier of the expiration of the Loan, demand for full repayment, or acceleration of the Loan, Borrower shall pay, in a single payment, all of the remaining unpaid principal and interest of the Loan, together with any other amounts due under this Note or the Loan Agreement. Payments under this Note shall be applied first any costs or fees owing hereunder or under the Loan Agreement, next to accrued interest, and finally to the reduction of the principal of this Note.

Provided that the undersigned shall first give the holder of this Note ninety (90) calendar days' prior notice, the indebtedness evidenced hereby may be prepaid in whole or in part from

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time to time without premium or penalty. Any such prepayment shall be made by draw against the Letter of Credit referenced below if so elected by the holder of this Note within such 90 day period.

Should default be made in any payment when due or in the performance or observance of any of the covenants and agreements of this Note, the whole sum of principal and interest shall become immediately due and payable at the option of the holder. Failure to exercise such option shall not constitute a waiver of the right to exercise it in the event of a continuing or subsequent default. Whether or not the entire balance is accelerated, all amounts of principal and interest past due shall bear interest at the rate of twelve percent (12%) per annum from and after the due date.

An Event of Default under the Loan Agreement shall be a default hereunder, whereupon the holder may at its option declare all sums as are then outstanding hereunder immediately due and payable. This Note shall be secured by an unconditional, irrevocable letter of credit (the "Letter of Credit"), payable upon demand, issued by a banking institution mutually agreeable to the undersigned and the holder of this Note, all as more fully set forth in the Loan Agreement.

Upon the sale, transfer or assignment, whether voluntary, involuntary or by operation of law, of all or substantially all of Borrower's interest in the Facility (as such term is defined in the Loan Agreement), then at its sole option the holder hereof may, by written notice to the undersigned, declare all sums as are then outstanding hereunder to be immediately due and payable.

The holder of this Note may make demand for partial repayments of principal, or payments of interest, or both, and shall make demand for full repayment, upon the undersigned, in writing, by delivering or mailing said demand to the undersigned in the manner and at the address set forth in the Loan Agreement. Payments shall be due and payable on or before ten (10) days, excluding Saturdays, Sundays and legal holidays, from the date the undersigned receives or is deemed to have received the demand. Unless otherwise specified in the demand, payment shall be made by a draw against the Letter of Credit.

The obligations of the Borrower under this Note are absolute, unconditional and irrevocable. All payments required hereunder shall be made without any setoff, counterclaim, deduction or withholding whatsoever.

Except for the demands described above, the undersigned hereby waives diligence, demand, presentment for payment, and notice of whatever kind or nature. Without discharging or in any way affecting the liability of the undersigned, the undersigned hereby consents to any and all extensions of this Note as the holder hereof may in its sole discretion grant from time to time, to the release of all or any part of the security for the payment hereof and to the release of any party liable for repayment of the obligations hereunder.

All payments due on this Note shall be payable in lawful money of the United States of America at the time of payment. Unless otherwise specified in writing by the holders of this Note, all payments shall be made by draws against the Letter of Credit. If the issuer of the Letter of

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Credit fails to honor any draw by the holder of this Note in full or in part, or if the amount remaining on the Letter of Credit is insufficient to pay the amount due on the Note, or in the event that the holder of this Note is required by any law or court order to refund or otherwise relinquish any portion of any amount received from any draw on the Letter of Credit, then Borrower shall pay the full balance due immediately on demand. Any such payment shall be in immediately available funds, and shall be made to the holder at the address first hereinabove indicated, or such other address as the holder may hereafter designate.

This Note shall be governed by the laws of the State of Washington, except to the extent that Federal laws or regulations may preempt the laws of the State of Washington.

In the event that this Note is placed in the hands of an attorney at law for collection after maturity or upon default or in the event that proceedings at law or in equity are instituted in connection herewith, or in the event that this Note is placed in the hands of an attorney at law to enforce any of the rights or the Agreements contained herein or in the Loan Agreement, the undersigned shall pay all costs of collecting or attempting to collect this Note or protecting or enforcing such rights including, without limitation, reasonable attorney's fees (including fees incurred in any bankruptcy, appellate, or arbitration proceeding); and all such amounts shall be deemed to be secured by the letter of credit.

This Note and the Loan Agreement are subject to the limitation that in no event shall interest or any other amount paid or agreed to be paid for the use, forbearance or detention of money to be advanced hereunder or pursuant to the Loan Agreement exceed the highest lawful rate permissible under applicable usury laws, if any. If fulfillment of any provision hereof or of the Loan Agreement shall be deemed by a court of competent and final jurisdiction to violate any applicable usury restrictions, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and any amount received in excess of such limit shall be applied to reduce the unpaid principal balance hereof and not to the payment of interest.

Time is of the essence of this Note and of each and every provision hereof.

Borrower represents and warrants that this Note is made, and the proceeds hereof are to be used, solely for business and commercial purposes, and not for personal, consumer, household or family purposes.

No amendment, modification, or termination of any provision of this Note or of any of the Loan Documents shall in any event be effective unless the same shall be in writing and signed by Lender and Borrower.

NOTICE: ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT, ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, the undersigned has executed this Promissory Note as of the date first above written.

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ON THE BOARDS

By: _____
Print name: _____
Its: _____

krh - otbflot.not - 6.4.96

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City of Seattle

Executive Department—Office of Economic Development

Mary Jean Ryan, Director
Norman B. Rice, Mayor

RECEIVED OMP



June 7, 1996

To: Honorable Jan Drago, Council President

VIA: Tom Tierney, Director
Office of Management and Budget

From: Mary Jean Ryan, Director *MSR*

SUBJECT: Proposed Legislation

Enclosed is proposed legislation for consideration by the Seattle City Council. The Ordinance authorizes a CDBG Float Loan to On The Boards, a Washington nonprofit organization, to assist in their acquisition of the Queen Anne Hall from the American Conservatory Theater (ACT). ACT will use proceeds from the sale to complete their renovation of the Eagles Auditorium.

This application is consistent with the City's current policies regarding CDBG Float Loans and has been reviewed and approved by the City Loan Committee. The loan is eligible for use of CDBG funds due to meeting the National Objective of providing new jobs that will be made available to low- and/or moderate-income persons. The new jobs will result from On The Boards program expansion made possible with the larger facility. Acquisition of building by nonprofit organizations are also an eligible activity. The loan also meets the City's Comprehensive Plan goal (G17) which states that the City should preserve developments of historic, architectural or social significance that contribute to the identity of an area. Preserving the use of the ACT Theater as a performing facility meets this goal.

The Loan is secured by an irrevocable letter of credit provided by Seafirst Bank. Approval of the loan does not create any risk to the City's CDBG Program due to the provision of the letter of credit.

If you or your staff have any questions about the legislation, please contact Chuck Depew, at OED, at 684-0208. Thank you for your assistance with this economic development effort.

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EXHIBIT B to Loan Agreement

L/C NO: [REDACTED] PAGE: 1
INTERNATIONAL TRADE OPERATIONS
800 FIFTH AVENUE, FLOOR 31, SEATTLE, WASHINGTON 98104
P.O. BOX 3977, SEATTLE, WASHINGTON 98124

JUNE 1996

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [REDACTED]

BENEFICIARY:
CITY OF SEATTLE
OFFICE OF ECONOMIC DEVELOPMENT
3RD FLOOR, 600 FOURTH AVENUE
SEATTLE, WA 98104

APPLICANT:
[REDACTED]

AMOUNT: USD [REDACTED] AND 00/100 U.S. DOLLARS)

WE HEREBY ISSUE OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. [REDACTED] IN YOUR FAVOR, WHICH IS AVAILABLE FOR PAYMENT BY YOUR DRAFTS AT SIGHT DRAWN ON SEATTLE-FIRST NATIONAL BANK, SEATTLE, WA SHOWING THE NUMBER AND DATE OF THIS LETTER OF CREDIT. DRAFTS ARE TO BE ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. THE ORIGINAL OF THIS STANDBY LETTER OF CREDIT. IN THE EVENT OF ANY PARTIAL DRAWINGS THE ORIGINAL LETTER OF CREDIT WILL BE RETURNED UPON PROPER ENDORSEMENT BY THE BANK.

THIS LETTER OF CREDIT EXPIRES AT THE COUNTERS OF SEATTLE-FIRST NATIONAL BANK, LETTER OF CREDIT DEPARTMENT, CURRENTLY LOCATED AT 800 FIFTH AVENUE, FLOOR 31, SEATTLE, WASHINGTON NO LATER THAN [REDACTED] PROVIDED THAT IF THE OFFICE OF SUCH DEPARTMENT OF THE BANK IS NOT OPEN DURING NORMAL BUSINESS HOURS ON THE EXPIRATION DATE FOR ANY REASON INCLUDING FORCE MAJURE AS DEFINED UNDER ARTICLE 17 OF THE UNIFORM CUSTOMS AND PRACTICES REFERRED TO BELOW, THEN THIS LETTER OF CREDIT WILL BE HONORED UPON RESUMPTION OF SUCH DEPARTMENT'S BUSINESS DAY.

WE HEREBY ENGAGE WITH YOU THAT DRAFTS AND DOCUMENTS DRAWN UNDER AND IN STRICT COMPLIANCE WITH THE TERMS OF THIS LETTER

*** CONTINUED ON NEXT PAGE ***

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PAGE: 2

INTERNATIONAL TRADE OPERATIONS
800 FIFTH AVENUE, FLOOR 3., SEATTLE, WASHINGTON 98104
P.O. BOX 3977, SEATTLE, WASHINGTON 98124

OF CREDIT WILL BE DULY HONORED UPON PRESENTATION TO US.

THIS LETTER OF CREDIT IS SUBJECT TO UNIFORM CUSTOMS AND
PRACTICE FOR DOCUMENTARY CREDITS, 1993 REVISION, ICC
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City of Seattle

Executive Department—Office of Management and Planning

Thomas M. Tierney, Director
Norman B. Rice, Mayor

June 7, 1996

The Honorable Mark Sidran
City Attorney
City of Seattle

Dear Mr. Sidran:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING
DEPARTMENT: Economic Development

SUBJECT: AN ORDINANCE relating to the Community Development Block Grant Float Loan Program; authorizing a short-term loan of up to Eight Hundred Thousand Dollars (\$ 800,000) in Block Grant funds to On The Boards, a Washington nonprofit corporation, for an economic development project involving the purchase the Queen Anne Hall; and authorizing an amendment to the City of Seattle's 1996 Consolidated Plan.

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation to your office for review and drafting.

After reviewing this request and any necessary redrafting of the enclosed legislation, return the legislation to OMP. Any specific questions regarding the legislation can be directed to Leda Young at 233-7268.

Sincerely,

Norman B. Rice
Mayor

by

Leda Young for

TOM TIERNEY
Director

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Enclosure

96-139



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